

RESOLUTION NO. 4091

A RESOLUTION APPROVING AN AGREEMENT
BETWEEN THE STATE OF CALIFORNIA AND
THE CITY OF LODI COVERING THE CITY'S
PROPOSED FEDERAL AID URBAN PROJECTS

BE IT RESOLVED that the City Council of the City of Lodi does hereby approve the Agreement between the State of California and the City of Lodi covering the City's proposed Federal Aid Urban projects attached hereto, marked Exhibit "A", and by reference made a part hereof.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Lodi does hereby authorize the Mayor to execute said Agreement on behalf of the City.

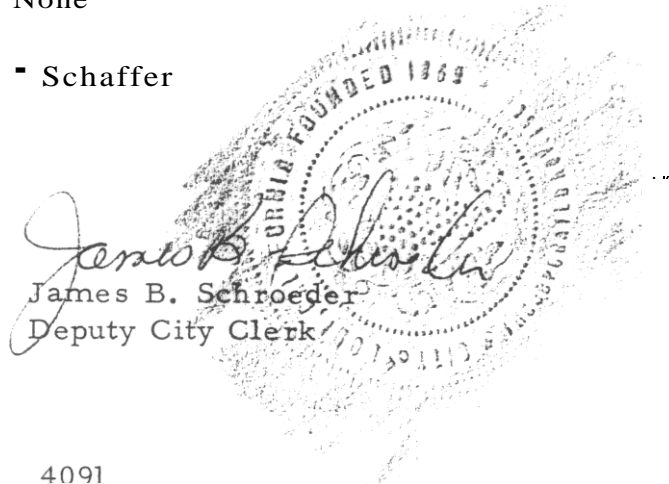
Dated: August 6, 1975

I hereby certify that Resolution No. 4091 was passed and adopted by the City Council of the City of Lodi in a regular meeting held August 6, 1975 by the following vote:

Ayes: Councilmen - Ehrhardt, Katnich, Pinkerton, and Hughes

Noes: Councilmen - None

Absent: Councilmen - Schaffer

The image shows a circular official seal of the City of Lodi, California, with the text "CITY OF LODI, CALIFORNIA" and "FOUNDED 1869". Overlaid on the seal is a handwritten signature in cursive script that reads "James B. Schroeder". Below the signature, the text "James B. Schroeder" and "Deputy City Clerk" is printed.

James B. Schroeder
Deputy City Clerk

LOCAL AGENCY-STATE AGREEMENT

for

Federal-aid Urban System Projects

F.A.U.

10 San Joaquin Lodi
District County City

AGREEMENT NO. 3

MASTER AGREEMENT

URBANIZED AREA Name Lodi

URBANIZED AREA No. _____

THIS AGREEMENT, made in Lodi, California this 6th day of August, 1975, by and between the City of Lodi, political subdivision(s) of the State of California, hereinafter referred to as "LOCAL AGENCY", and the STATE OF CALIFORNIA, acting by and through the Division of Highways of the Department of Transportation, hereinafter referred to as "STATE".

WITNESSETH :

WHEREAS, the Congress of the United States has in the Federal-Aid Highway Act of 1970 declared it to be in the national interest for Federal Funds to be expended for highway and fringe parking projects on the Federal-aid Urban System within urbanized areas; and

WHEREAS, the Legislature of the State of California has enacted Chapter 201 of the Statutes of 1971, by which the federal funds authorized may be made available for use on county highways, city streets, state highways and fringe parking in urbanized areas in accordance with the intent of the federal act; and

WHEREAS, there exists a compelling need for improvements of streets and highways and fringe parking facilities within the boundaries of LOCAL AGENCY; and

WHEREAS, LOCAL AGENCY and STATE therefore desire to make use of such FAU funds as may be made available within the jurisdictional boundaries of said LOCAL AGENCY; and

WHEREAS, before Federal-aid **will** be made available for FAU program, LOCAL AGENCY and STATE are required to enter into an agreement relative to prosecution of the said project and maintenance of the completed facility.

THEREFORE, the parties agree as follows:

ARTICLE I - CONDITIONS

1. The project is located on an approved Federal-aid Urban System route.
2. The project is part of a program which serves to implement an areawide plan held currently valid by the regional transportation policy board.
3. Federal funds may participate only in work which has been officially programmed to and authorized by the Federal Highway Administration in advance of its performance.

ARTICLE II - FAU IMPROVEMENTS

1. The term "FAU IMPROVEMENT" as used herein means any construction that is financed in part with federal funds provided in accordance with Section 106 of the Federal Aid Highway Act of 1970.
2. LOCAL AGENCY may submit for consideration and approval of STATE and Federal Highway Administration programs for FAU improvements when the following items have been completed:
 - a. The Federal-aid Urban System Approved
 - b. The County's Procedures and Criteria Approved
 - c. The project selected by the County on the basis of the established Criteria
3. Unless otherwise delegated the County Board of Supervisors shall provide an endorsement that the project(s) was chosen for FAU funding.
4. The program shall be in a form prescribed by STATE and shall designate the federal funds requested and the matching funds to be provided by LOCAL AGENCY and if a State Highway is involved the matching funds to be provided by STATE. Adoption of the program by LOCAL AGENCY and approval by STATE shall cause such program to be a part of this agreement as though fully set forth herein. Unless otherwise delegated the program shall be approved by the LOCAL AGENCY'S governing body. Cooperative projects including work on a State highway shall be the subject of a separate cooperative agreement.
5. In processing FAU IMPROVEMENTS, LOCAL AGENCY will conform to all STATE statutes, regulations and procedures relating to the FAU program and to all applicable federal laws, regulations, and

policy and procedural or instructional memoranda. This includes, but is not limited to, the holding of public hearings when required, the publishing of various press notices, and the preparation of plans, specifications, and estimates.

6. Unless otherwise designated in the approved program, FAU improvements will be constructed by contract in accordance with regular federal-aid primary and urban fund procedures. Such procedures require the use of Standard Specifications having prior Federal Highway Administration approval, FHWA approval of plans, special provisions and estimated costs prior to advertisement, a certification by LOCAL AGENCY with respect to the right of way, advertisement for a minimum of 3 weeks prior to bid opening, and prior FHWA concurrence in the award and acceptance of the contract. The contract will be awarded by LOCAL AGENCY, its agent, or by STATE as may be determined between the parties prior to each project advertisement.

7. When a FAU IMPROVEMENT includes work to be performed by a railroad, the contract for such work shall be entered into by LOCAL AGENCY or by STATE, as parties hereto agree. A contract entered into by LOCAL AGENCY for such work must have prior approval of STATE and the FHWA (if Federal funds are used). In either event, LOCAL AGENCY shall enter into an agreement with the railroad providing for maintenance of the protective devices or other facilities installed under the service contract.

8. LOCAL AGENCY shall provide or arrange for adequate supervision and inspection of each FAU improvement, including contracts awarded by STATE. With prior Federal Highway Administration approval, surveying, inspection and testing may be performed by a consulting engineer provided overall supervision of the contractor's operations and progress is performed by an employee or employees of LOCAL AGENCY.

9. STATE shall exercise general supervision over FAU improvements and may assume full and direct control over the project whenever STATE, at its sole discretion, shall determine that its responsibility to the United States so requires. LOCAL AGENCY contracts shall so stipulate.

ARTICLE III - RIGHTS OF WAY

1. No contract for the construction of a FAU IMPROVEMENT shall be awarded until the necessary rights of way have been secured. Prior to the advertising of a project on a local street, LOCAL AGENCY shall certify and upon request shall furnish STATE with evidence that necessary rights of way are available for construction purposes or will be available by the time of contract award.

2. LOCAL AGENCY agrees to hold STATE harmless from any liability which may result in the event the right of way is not clear as certified. The furnishing of right of way as provided for herein includes, in addition to all real property required for the improvement, free and clear of obstructions and encumbrances, the payment of damages to real property not actually taken but injuriously affected by the proposed improvement. LOCAL AGENCY shall pay from its funds any costs which arise out of delays to the contractor because utility facilities have not been removed or relocated, or because rights of way have not been made available to the contractor for the orderly prosecution of the work.

3. Subject to STATE approval and such supervision over LOCAL AGENCY'S right of way acquisition procedures as STATE may determine is necessary, LOCAL AGENCY may claim reimbursement from Federal funds for expenditures to purchase rights of way included in an approved program.

4. The LOCAL AGENCY will comply with Title III of the Uniform Real Property Acquisition Policy.

5. Whether or not Federal-aid is to be requested for right of way, should LOCAL AGENCY, in acquiring right of way for FAU IMPROVEMENT, displace an individual, family, business, farm operation, or non-profit organization, relocation payments and services will be provided as set forth in Chapter 5 of Title 23, U. S. Code. The public will be adequately informed of the relocation payments and services which will be available and to the greatest extent practicable no person lawfully occupying real property shall be required to move from his dwelling or to move his business or farm operation without at least 90-days written notice from the LOCAL AGENCY. LOCAL AGENCY will provide the State with specific assurance, on each project, that no person will be displaced until comparable decent, safe and sanitary replacement housing is available within a reasonable period of time prior to displacement, and that LOCAL AGENCY'S relocation program is realistic and is adequate to provide orderly, timely and efficient relocation of displaced persons for the project as provided in FHWA Instructional Memorandum 80-1-71, dated April 30, 1971.

ARTICLE IV - FISCAL PROVISIONS

1. When an FAU IMPROVEMENT contract is to be awarded by STATE, matching funds will be provided by LOCAL AGENCY prior to the time that such funds are required to reimburse contractor. STATE will bill LOCAL AGENCY for amount due immediately following contract award or at option of LOCAL AGENCY will submit monthly bills during life of contract.

2. The estimated total cost of FAU projects, the amounts of Federal-aid programed, and the matching amounts agreed upon may be adjusted by mutual consent of the parties hereto, provided funds are available to cover increases and provided Federal Highway Administration concurs in any increase in the Federal-aid. However, this is not to be construed to mean that the original programmed participation percentage ratio will be changed.

3. Upon submittal by LOCAL AGENCY of a statement of expenditures for FAU improvements, STATE will pay its agreed share and will advance an amount equal to the legal pro rata federal share of the costs believed to be eligible for participation with federal funds and will voucher Federal Highway Administration for subsequent reimbursement.

4. LOCAL AGENCY shall use "nonfederal" funds to finance the local share of eligible costs and expenditures ruled ineligible for financing with federal funds. STATE shall make preliminary determination of eligibility for federal fund financing. Ultimate determination shall rest with the Federal Highway Administration. Any overpayment of amounts due shall be returned to STATE upon demand.

5. When any portion of a LOCAL AGENCY project is performed by STATE, charges therefor shall include assessment on direct labor costs in accordance with Section 8755.1 of the State Administrative Manual. The portion of such charges not financed with Federal funds shall be paid from funds of LOCAL AGENCY.

6. Should LOCAL AGENCY fail to pay monies due STATE within 30 days of demand or within such other period as may be agreed between the parties hereto, STATE, acting through State Controller, may withhold an equal amount from future apportionments due LOCAL AGENCY from the Highway Users Tax Fund.

7. Auditors of STATE and the United States shall be given access to LOCAL AGENCY'S books and records and shall be given such assistance and information as is requested for the purpose of checking costs paid or to be paid by STATE hereunder.

ARTICLE V - MISCELLANEOUS PROVISIONS

1. This agreement shall have no force or effect unless and until the projects have been approved by the Federal Highway Administration.

2. The Congress of the United States, the Legislature of the State of California, and the Governor of the State of California, each within their respective jurisdiction, have prescribed certain employment practices with respect to contract and other work financed with Federal or State funds. LOCAL AGENCY shall insure that work performed under this agreement is done in conformance with rules and regulations embodying such requirements where they are applicable. Any agreement or service contract entered into by a LOCAL AGENCY for the performance of work connected with this agreement shall incorporate Exhibit "A" attached hereto, or such other provisions as STATE or Federal Highway Administration may prescribe.

3. When Federal funds are to participate in the cost of work done by a consultant, the agreement or contract with the consultant may not be executed or awarded until the selection of the consultant and the terms of the agreement or contract have been found by STATE to be in conformance with Federal Policy and Procedure Memorandum No. 40-6 and have been approved by the Federal Highway Administration. Such agreement or contract shall include a provision that the work and records of the consultant are subject to inspection at all times by representatives of LOCAL AGENCY, STATE, and the Federal Highway Administration and that agreement or contract may be terminated by LOCAL AGENCY upon a finding that the consultant is failing to live up to the terms of the agreement or contract. All major changes in the agreement or contract must have prior approval of the Federal Highway Administration. All such approvals shall be requested through State. As soon as agreement or contract with consultant has been awarded five certified copies of said agreement or contract shall be submitted to STATE.

4. LOCAL AGENCY and its contractor shall retain all original records and documents relating to work hereunder financed in part with federal funds and shall make same available for inspection by STATE and Federal representatives upon request. Following final settlement of the project accounts with the Federal Highway Administration, such records and documents may be microfilmed at the option of LOCAL AGENCY but in any event shall be retained for a period of three years.

5. (a) Neither STATE nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by a LOCAL AGENCY under or in connection with any work, authority or jurisdiction delegated to a LOCAL AGENCY under this agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, LOCAL AGENCY shall fully indemnify and hold STATE harmless from any liability imposed for injury (as defined by Government

FAU AGREEMENT

Code Section **810.8**) occurring by reason of anything done or omitted to be done by LOCAL AGENCY under or in connection with any work, authority or jurisdiction delegated to LOCAL AGENCY under this agreement.

(b) Neither LOCAL AGENCY nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction not delegated to LOCAL AGENCY under this agreement. It is also understood and agreed that, pursuant to Government Code Section **895.4**, STATE shall fully indemnify and hold LOCAL AGENCY harmless from any liability imposed for injury (as defined by Government Code Section **810.8**) occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction not delegated to LOCAL AGENCY under this agreement.

ARTICLE VI - MAINTENANCE

1. Upon acceptance by the awarding authority of a completed FAU improvement project or upon the contractor being relieved of the responsibility for maintaining and protecting a portion of the work, the agency having jurisdiction over the street shall maintain the completed work in a manner satisfactory to the authorized representatives of the United States. If, within **90** days after receipt of notice from STATE that a project on a street under its jurisdiction or any portion thereof, is not being properly maintained, LOCAL AGENCY has not satisfactorily remedied the conditions complained of, the approval of further Federal-aid projects of LOCAL AGENCY will be withheld until the project shall have been put in a condition of maintenance satisfactory to STATE and the Federal Highway Administration. The provisions of this section shall not apply to a street facility which has been vacated through due process of law or which has been removed from Federal-Aid Systems.

2. The maintenance referred to in paragraph 1 above includes not only the physical condition of the facility but its operation as well. Traffic operations improvements on local streets shall be maintained at no cost to the Federal Highway Administration or STATE by an adequate and well trained staff of traffic engineers and technicians. Said maintenance staff may be employees of a LOCAL AGENCY, another unit of government or a consultant under contract with a LOCAL AGENCY.

FAU AGREEMENT

IN WITNESS WHEREOF, the parties have executed this agreement by their duly authorized officers.

STATE OF CALIFORNIA
Department of Transportation
Division of Highways

CITY OF LODI

HEINZ HECKEROTH
Assistant Director, Highways

By Wend Schaffer
Mayor

For

Henri Dekkers
Chief, Office of Local Assistance

ATTEST: Wesley H. Nowicka
City Clerk

Approval Recommended:

Neel Andersen
District Director of Transportation

Ray J. Gervin
Local Assistance Engineer

CONFIDENTIAL

XX
 XXXXXXXChairmanXXBoardXXXXXXXXXXXX
 XX XXXXXXXofSupervisorsXX XXXXX

ATTEST:XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXClerk of BoardXXXXXXXXXXXXXXXXXXXX

NONDISCRIMINATION PROVISIONS:

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows :

- (1) Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
- (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department to enter into such litigation to protect the interests of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.